

26.09.2023

Item No. 11

Crt. No.22

b.r.

WPA 23173 of 2018

Subhas Chandra Sarkar

-vs-

The State of West Bengal & Ors.

Mr. Saibal Acharya

Mr. Jakir Hossain

.... For the petitioner

Mr. Bhaskar Prasad Vaisya

Mr. Gourav Das

.... For the State.

The petitioner claimed to have worked as an **Assistant Teacher**. The petitioner retired from his employment of **December 31, 2018** as would be evident from the Pension Payment Order dated **January 9, 2020** a copy whereof is handed over to this Court by the learned counsel for the petitioner and the same is taken on record. The first demand on account of alleged overdrawal was made and intimated to the petitioner dated **November 12, 2018**, **Annexure P-13** at **page 68** to the writ petition. It is evident that, after the employee retired the State employer has alleged the overdrawal against the petitioner.

The law is well settled by the Hon'ble Supreme Court ***In the matter of: State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported at (2015) 4 Supreme Court Cases 334.*** The Hon'ble Supreme Court had observed as under:

“18. It is not possible to postulate all situations of hardship which would govern

employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

In view of the above, this Court is of the considered view that, the first demand raised by the

State employer on account of alleged overdrawal against the petitioner after his retirement for recovery and the same is iniquitous or harsh or arbitrary on the part of the State employer. The employee has served the employer for a substantive period and even before the date of retirement of the employee, the employer did not raise any objection on account of the alleged overdrawal. In the facts of this case when the petitioner retired on **December 31, 2018** and the first demand was raised on **November 12, 2018** as narrated above, if such demand stands this would **far outweigh the equitable balance of the employer's right to recover.**

In the identical fact situation, this Court by its judgement and order dated **August 21, 2023** rendered ***In the matter of: Aminul Islam -vs- The State of West Bengal & Ors., WPA 7493 of 2020*** has allowed the writ petition and quashed the claim of the State employer on the ground of alleged overdrawal.

The learned counsel for the appearing parties have confirmed this Court that till date to their knowledge no appeal has been carried out from the said judgement and order of this Court dated **August 21, 2023** and the same is holding the field.

For the foregoing reasons and discussions the impugned decision of the State employer on account of the alleged overdrawal against the petitioner dated

November 12, 2018, Annexure P-3 at **page 68** to the writ petition and the reflection in sync therewith in the Pension Payment Order issued in favour of the petitioner stand **set aside** and **quashed**.

The revised Pension Payment Order shall be issued by the State employer in favour of the petitioner positively within a period of **four weeks** from the date of communication of this order before the appropriate authority. The pension and all other allied retirement benefit to which the petitioner is eligible to receive in accordance with law shall be released, disbursed and paid to the petitioner forthwith taking into account, as if there was no allegation of overdrawal against the petitioner. The overdrawn amount for a sum of **Rs. 1, 64,635.60/-** shall be refunded and returned to the petitioner **along with interest @ 8% per annum since the next date of retirement i.e. January 1, 2019 till the actual payment is tendered to the petitioner**.

Pursuant to the direction of the co-ordinate bench made on **December 12, 2018** the learned State counsel has confirmed that, the amount has already been lying deposited by the School authority in a nationalized bank earning maximum interest. While disbursing and paying the petitioner **along with interest @ 8% per annum** as directed above, the entire accrual shall be considered and calculated. If the accrual along with principal sum is higher, then

the **excess** sum should revert back to the State Exchequer and if the accrual along with principal is lesser, then the **balance** shall be paid by the State employer to the petitioner. The entire exercise of making actual payment to the petitioner shall be carried out and completed positively within a period of **four weeks** from the date of issuing the revised pension payment order directed above.

The learned counsel for the State opposed the grant of interest. Such opposition stands **overruled** by this Court in exercise of its equitable jurisdiction and considering the fact that the amount which is lawfully payable to the petitioner has been withheld illegally and wrongfully.

Despite direction being made by a co-ordinate bench on **December 19, 2018**, no affidavit-in-opposition was filed.

On the above terms and with the above observations, this writ petition being **WPA 23173 of 2018** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)